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ABC-CIA flap could lead to a noisy FCC slap

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IF THE FEDERAL Communications Commission agrees with the Central Intelligence Agency that ABC News violated the Fairness Doctrine three months ago when it said the CIA ordered the assassination of a Honolulu man, the worst thing the network would be likely to face is a force-fed meal of crow.

That conclusion, however, by FCC spokesman David Brenner, is unlikely to silence critics who see the supersecret spy agency in the role of a sinister Big Brother, out to repeal the 1st Amendment.

ABC locked horns with the CIA in September when Peter Jennings reported on "World News Tonight" that Ronald Rewald, a Honolulu investment banker indicted for allegedly swindling investors out of \$200 million, actually was an undercover agent running a CIA "front." The report, quoting another self-proclaimed spy, Scott Barnes, further said the agency ordered that Rewald be murdered because his indictment had made him "a liability."

The CIA, already under Congressional fire over an "assassination manual" reportedly issued to agency-backed rebels fighting Nicaragua's Sandinista regime, was outraged. Prodded by CIA protests, ABC News first aired the agency's denial, saying, "We stand by the story," then, last month, broadcast a "clarification" in which the network admitted that upon further investigation, during which Barnes refused to take a lie detector test, it was unable to corroborate his story.

"ABC News has now concluded that Barnes' charges cannot be substantiated and we have no reason to doubt the CIA's denial," Jennings said. It was not enough for the CIA, which filed an official complaint with the FCC asking that the matter be investigated.

BRENNER, SENIOR adviser to FCC chairman Mark Fowler, defended the CIA's right to file the complaint, but he said he doubted if any decision his agency finally made would result in revocation of ABC's license to broadcast.

"It's very unlikely that would happen," Brenner said. "It's one of the things that could be done in an extreme case, but it has never hap-

pened at the FCC. You could not rule it out, but it is very unlikely that a single violation of the Fairness Doctrine would come close to triggering revocation of a license."

Under the Fairness Doctrine, all licensed broadcasters are required to cover controversial issues of public importance and afford a reasonable opportunity for opposing viewpoints and equal time for any target of "personal attack," but Brenner said anyone filing complaint of a violation must be prepared to prove it beyond doubt.

"What's required to be shown is a prima facie case that a licensee has been unreasonable," he said. "Not that it has failed to present one side, but that it has been unreasonable in its determination on whether to present one or another side. It's not whether they were wrong, but whether they were unreasonable in concluding what they did. Even if they were wrong, but they were reasonable in their conclusion, then we'd stay out of it."

Brenner said if the FCC did find ABC in violation of the Fairness Doctrine, the harshest punishment likely to be meted out to the network would fall along the lines of a forced retraction of the story.

"IF A VIOLATION were found, then ABC would be asked how it plans to correct the imbalance."

Brenner said. "If the licensee comes up with a satisfactory answer, that's the end of the story."

Critics of the CIA's action saw it differently. NBC president Larry Grossman, in a speech in San Antonio, said the action "should send chills up and down the spine of anyone concerned with the 1st Amendment," and he described the CIA as "one powerful arm of government... seeking to punish the press by taking advantage of another government agency's life and death power over radio and television station operating licenses."

CBS News president Ed Joyce praised ABC "for responding quickly with a clarification of that story in a traditional and appropriate journalistic fashion."

"It is hard to understand what else the CIA expected or desired," he said. "ABC's handling of this matter was the appropriate way to deal with the story. It belongs as a part of the unfolding information process, not as a matter to be brought before a regulatory agency."

Fred Friendly, former CBS News president and now a professor at the Columbia University Graduate School of Journalism, was harsher

still. He called the CIA action "a bastardization of the Fairness Doctrine."

"It's a complete misuse of the Fairness Doctrine," he said. "The Fairness Doctrine says to do controversial programs of public importance and to do them fairly. It has nothing to do with punishment and to use them as an alternate to libel is an aberration and extremely dangerous. A penalty [given ABC by the FCC] would mean that stations, who are already fearful, would never do anything controversial."

Half the stations, and the networks, are looking for an excuse not to do them anyway, and this would give them a chance to say, 'Why should we do them? We'll lose our license.'

"It's a cheap trick by an instrument of government that ought to be ashamed. This is mischief-making. Let the CIA do its mischief-making under its mandate, not in the communications channels in the domestic United States."

FRIENDLY SAID the question of whether a government agency can sue for libel never has been tested in a federal court, but that in any case, the CIA never would sue because such action would require it to open its files to defense attorneys in the discovery process. CIA spokeswoman Pattv Volz said, however, that the agency's counsel determined that it would be illegal for the agency to sue ABC, leaving the FCC complaint the only alternative.

"This was done because of repeated attempts and discussions with ABC to get a retraction of the entire story, which is about 95 percent wrong," she said. "We're not asking for the revocation of its license. We're asking [the FCC] for an examination of the way ABC reported the news: whether there's distortion. We're asking it to carry out its inquiry and come up with its own suggestions and recommendations."

Volz said the controversy over the Nicaraguan rebel manual, in which "neutralization" of enemy political leaders was recommended, had nothing to do with the CIA's decision to challenge ABC News.

"We've never confirmed the existence of that manual," she said. "One doesn't have anything to do with the other, but we did feel we had to do something. It's not fair to the American public to have them out there thinking the CIA goes around killing people when we don't. We simply do not do that, and we had to have some way of making our point."